



**BILLING CODE 4810-33-P**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**Agency Information Collection Activities: Information Collection Renewal; Comment Request; Credit Risk Retention**

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "Credit Risk Retention."

**DATES:** You should submit written comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0249, 400 7<sup>th</sup> Street, SW., suite 3E-218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [prainfo@occ.tress.gov](mailto:prainfo@occ.tress.gov). You may personally inspect and photocopy comments at the OCC, 400

7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., suite 3E-218, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Credit Risk Retention.

OMB Control No.: 1557-0249.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: This information collection request relates to 12 CFR part 43, which implemented section 941(b) of the Dodd-Frank Act.<sup>1</sup> Section 941(b) of the Dodd-Frank Act required the OCC, Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and, in the case of the securitization of any residential mortgage asset, the Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD) to issue rules that, subject to certain exemptions: require a securitizer to retain not less than 5% of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; and prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under the statute and implementing regulations.

Part 43 sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities. Section 15G of the Exchange Act also exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. Section 15G also states that the agencies must permit a securitizer to retain less than five percent of the credit risk of commercial mortgages, commercial loans, and automobile

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010)).

loans that are transferred, sold, or conveyed through the issuance of ABS by the securitizer if the loans meet underwriting standards established by the federal banking agencies.<sup>2</sup>

Part 43 sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities, as well as exemptions from the risk retention requirements, and contains requirements subject to the PRA.

Section 43.4 sets forth the conditions that must be met by sponsors electing to use the standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, or any combination thereof. Sections 43.4(c)(1) and 43.4(c)(2) specify the disclosures required with respect to eligible horizontal residual interests and eligible vertical interests, respectively.

A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) is required to disclose: the fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction (§43.4(c)(1)(i)(A)); the material terms of the eligible horizontal residual interest (§43.4(c)(1)(i)(B)); the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests (§43.4(c)(1)(i)(C)); the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests (§43.4(c)(1)(i)(D)); the reference data set or other historical information used to develop the key inputs and assumptions (§43.4(c)(1)(i)(G)); the fair value of the eligible horizontal residual interest retained by the sponsor (§43.4(c)(1)(ii)(A)); the fair value of the eligible horizontal residual interest required to be retained by the sponsor (§43.4(c)(1)(ii)(B)); a description of any material differences between the methodology used in

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<sup>2</sup> 15 U.S.C. 78o-11(c)(1)(B)(ii) and (2).

calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing (§43.4(c)(1)(ii)(C)); and the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account (§43.4(c)(1)(iii)).

For eligible vertical interests, the sponsor is required to disclose: the form of the eligible vertical interest (§43.4(c)(2)(i)(A)); the percentage that the sponsor is required to retain (§43.4(c)(2)(i)(B)); a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing (§43.4(c)(2)(i)(C)); and the amount of vertical interest retained by the sponsor at closing (§43.4(c)(2)(ii)).

Section 43.4(d) requires a sponsor to retain the certifications and disclosures required in paragraphs (a) and (c) of this section in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

Section 43.5(k) requires sponsors relying on the master trust (or revolving pool securitization) risk retention option to disclose: the material terms of the seller's interest and the percentage of the seller's interest that the sponsor expects to retain at the closing of the transaction (§43.5(k)(1)(i)); the percentage of the seller's interest that the sponsor retained at closing (§43.5(k)(1)(ii)); the material terms of any horizontal risk retention offsetting the seller's interest under §43.5(g), §43.5(h) and §43.5(i) (§43.5(k)(1)(iii)); and the fair value of any horizontal risk retention retained by the sponsor (§43.5(k)(1)(iv)). Additionally, a sponsor must retain the disclosures required in §43.5(k)(1) in its records and must provide the disclosure upon

request to the Commission and the sponsor's appropriate federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§43.5(k)(3)).

Section 43.6 addresses the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The requirements for the eligible ABCP conduit risk retention option include disclosure to each purchaser of ABCP and periodically to each holder of commercial paper issued by the ABCP conduit of the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller (§43.6(d)(1)). An ABCP conduit sponsor relying upon this section shall provide, upon request, to the Commission and the sponsor's appropriate Federal banking agency, if any, the information required under §43.6(d)(1), in addition to the name and form of organization of each originator-seller that retains an interest in the securitization transaction (§43.6(d)(2)).

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each originator-seller which is satisfying a risk retention obligation in respect to ABS interests acquired by an eligible ABCP conduit (§43.6(f)(2)(i)). If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP, and upon request, the Commission and the sponsor's appropriate federal banking agency, in writing of the name and form of organization of any originator-seller that fails to retain, and the amount of

ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§43.6(f)(2)(ii)(A)(1)); the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of the rule, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§43.6(f)(2)(ii)(A)(2)); and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests (§43.6(f)(2)(ii)(A)(3)).

Section 43.7 sets forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and includes disclosures of: the name and form of organization of each initial third-party purchaser (§43.7(b)(7)(i)); each initial third-party purchaser's experience in investing in commercial mortgage-backed securities (§43.7(b)(7)(ii)); other material information (§43.7(b)(7)(iii)); the fair value and purchase price of the eligible horizontal residual interest retained by each third-party purchaser, and the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option (§43.7(b)(7)(iv) and (v)); a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to §43.4 (§43.7(b)(7)(vi)); the material terms of the applicable transaction documents with respect to the Operating Advisor (§43.7(b)(7)(vii)); and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties (§43.7(b)(7)(viii)). A sponsor relying on the commercial mortgage-backed

securities risk retention option is also required to provide in the underlying securitization transaction documents certain provisions related to the Operating Advisor (§43.7(b)(6)), to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements (§43.7(c)(2)(A)), and to notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements (§43.7(c)(2)(B)).

Section 43.8 requires that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option must disclose a description of the manner in which it has met the credit risk retention requirements (§43.8(c)).

Section 43.9 sets forth the requirements for sponsors relying on the open market CLO risk retention option, and includes disclosures of a complete list of, and certain information related to, every asset held by an open market CLO (§43.9(d)(1)), and the full legal name and form of organization of the CLO manager (§43.9(d)(2)).

Section 43.10 sets forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and includes disclosures of the name and form of organization of the qualified tender option bond entity, a description of the form and subordination features of the retained interest in accordance with the disclosure obligations in section 43.4(d), the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest, and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest (§43.10(e)(1)-(4)). In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond



entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates (§ 43.10(e)(5)).

Section 43.11 sets forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain, including disclosure of the name and form of organization of any originator that acquires and retains an interest in the transaction, a description of the form, amount and nature of such interest, and the method of payment for such interest (§ 43.11(a)(2)). A sponsor relying on this section is required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with retention amount and hedging, transferring and pledging requirements (§ 43.11(b)(2)(A)), and to promptly notify the holders of the ABS interests in the transaction in the event of originator non-compliance with such regulatory requirements (§ 43.11(b)(2)(B)).

Sections 43.13 and 43.19(g) provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans that meet certain specified criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective (§§ 43.13(b)(4)(i) and 43.19(g)(2)), and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity (§§ 43.13(b)(4)(iii) and 43.19(g)(2)). In addition, §§ 43.13(c)(3) and 43.19(g)(3) provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential

mortgage loans does not meet all of the criteria; provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

Section 43.15 provides exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in § 43.16, qualifying CRE loans that meet the criteria specified in § 43.17, and qualifying automobile loans that meet the criteria specified in § 43.18. Section 43.15 also requires the sponsor to disclose a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention (§ 43.15(a)(4)). In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (“qualifying assets”), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group’s loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral (§ 43.15(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.15(a) and (b) in its records and must provide the disclosure upon request to the Commission and the sponsor’s appropriate federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Sections 43.16, 43.17 and 43.18 each require that: the depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective (§§ 43.16(a)(8)(i), 43.17(a)(10)(i),

and 43.18(a)(8)(i)); the sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity (§§ 43.16(a)(8)(iii), 43.17(a)(10)(iii), and 43.18(a)(8)(iii)); and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase (§§ 43.16(b)(3), 43.17(b)(3), and 43.18(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.16(a)(8), 43.17(a)(10) and 43.18(a)(8) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Estimated Number of Respondents: 35 sponsors; 182 annual offerings per year.

Total Estimated Annual Burden: 3,139 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**[THIS SIGNATURE PAGE RELATES TO THE NOTICE ENTITLED “AGENCY INFORMATION COLLECTION ACTIVITIES: INFORMATION COLLECTION RENEWAL; COMMENT REQUEST; CREDIT RISK RETENTION”]**

Dated: January 23, 2018.

**Karen Solomon,**

*Acting Senior Deputy Comptroller and Chief Counsel,*

*Office of the Comptroller of the Currency.*

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